No. 3514

United States

Circuit Court of Appeals

For the Ninth Circuit.

GEORGE E. KNOWLTON and JERRY KNOWLTON,

Plaintiffs in Error,

vs.

THE UNITED STATES OF AMERICA,

Defendant in Error.

Transcript of Record.

Upon Writ of Error to the United States District Court for the District of Oregon.

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Names and Addresses of Attorneys of Record.

MESSRS. MANNING & BECKMAN,
Fenton Building, Portland, Oregon.
For the Plaintiffs in Error.

MR. LESTER W. HUMPHREYS,
United States Attorney.

MR. HALL S. LUSK,
Assistant United States Attorney, Portland, Oregon.

For the Defendant in Error.

In the District Court of the United States for the District of Oregon.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

GEORGE E. KNOWLTON and
JERRY KNOWLTON,
Defendants.

Citation on Writ of Error.

United States of America,
District of Oregon,—ss.

To the United States of America, and to Lester W. Humphreys, United States Attorney for the District of Oregon, GREETING:

You are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, within thirty days from the date hereof, pursuant to a writ of error filed in the Clerk's office of the District Court of the United States for the District of Oregon, wherein George E. Knowlton and Jerry Knowlton are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Given under my hand, at Portland, in said Dis-

trict, this 19th day of April, in the year of our Lord one thousand nine hundred and twenty.

R. S. BEAN, Judge.

Due service of the within citation accepted this 19th day of April, 1920.

HALL S. LUSK,
Asst. U. S. Attorney.

[Endorsed]: United States District Court, District of Oregon. Filed April 19, 1920, G. H. Marsh, Clerk.

In the United States Circuit Court of Appeals for the Ninth Clrcuit.

Writ of Error.

GEORGE E. KNOWLTON and
JERRY KNOWLTON,
Plaintiffs in Error,
vs.
THE UNITED STATES OF AMERICA,
Defendant in Error.

The United States of America,—SS.

The President of the United States of America, to the Judges of the District Court of the United States for the District of Oregon, GREETING:

Because in the records and proceedings, as also in the rendition of the Judgment of a plea which is in the District Court before the Honorable ROBERT S. BEAN, one of you, between the United States of America, plaintiff and defendant in er-

ror, and George E. Knowlton and Jerry Knowlton, defendants and plaintiffs in error, a manifest error hath happened to the great damage of the said plaintiffs in error, as by complaint doth appear; and we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid, and, in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at San Francisco, California, within thirty days from the date hereof, in the said Circuit Court of Appeals to be then and there held; that the record and proceedings aforesaid, being then and there inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States of America should be done.

WITNESS the Honorable EDWARD DOUGLAS WHITE, Chief Justice of the Supreme Court of the United States, this 19th day of April, 1920.

[Seal] G. H. MARSH,

Clerk of the District Court of the United States for the District of Oregon.

I hereby certify that the foregoing writ of error

was duly served upon the District Court of the United States for the district of Oregon by filing with me, as the Clerk of said Court, a duly certified copy thereof on this 19th day of April, 1920.

G. H. MARSH,
Clerk of the District Court of the United States for the District of Oregon.

[Endorsed]: Filed April 19, 1920. G H Marsh, Clerk United States District Court, District of Oregon.

BE IT REMEMBERED, that on the 28th day of June, 1919, there was filed in the United States District Court for the District of Oregon an Indictment, in words and figures as follows, to-wit:

In the District Court of the United States for the District of Oregon.

UNITED STATES OF AMERICA,
vs.
GEORGE E. KNOWLTON, alias George W. Wilson,
FLORENCE MAY KNOWLTON, alias Florence Wilson,
JERRY KNOWLTON, alias Jerry Smith, alias James King,
Defendants.

Indictment for Violation of Section 37 of the Federal Penal Code and Section 5 of the Act of

Congress approved March 3, 1917, known as the "REED AMENDMENT" (37 Stat. 1069).

United States of America,
District of Oregon,—ss.

The Grand Jurors of the United States of America for the District of Oregon, duly impaneled, sworn and charged to inquire within and for said district, upon their oaths and affirmations, do find, charge, allege and present:

COUNT ONE:

That GEORGE E. KNOWLTON, alias George W. Wilson; FLORENCE MAY KNOWLTON, alias Florence Wilson; JERRY KNOWLTON, alias Jerry Smith, alias James King, the defendants above named, on, to-wit: the first day of January, 1919, the exact time and place thereof being to the Grand Jurors unknown, did then and there knowingly, wilfully and feloniously conspire, combine, confederate and agree together with, between and among themselves and with divers other persons to this Grand Jury unknown, to commit the acts made offenses and crimes by the laws of the United States, to-wit: Section Five of the Act of Congress approved March 3, 1917, known as the Reed Amendment, that is to say: That the said above named defendants did then and there knowingly, unlawfully, wilfully and feloniously conspire, combine, confederate and agree together with, between and among themselves and with divers other persons to this

Grand Jury unknown, to enter into, devise and execute and did devise and execute a plot and scheme to order, purchase and cause intoxicating liquors for beverage purposes to be transported in interstate commerce, to-wit: from the State of California to the State and District of Oregon and to and into a State, the laws whereof then and there prohibited the manufacture and sale therein of intoxicating liquors for beverage purposes and which intoxicating liquors so as aforesaid to be ordered, purchased and caused to be transported as aforesaid, were not to be and were not so ordered, purchased and caused to be transported in interstate commerce as aforesaid for scientific, sacramental, medicinal and mechanical purposes, or for any purpose other than for beverage purposes in violation of the said Act of Congress as aforesaid.

That it was a part and portion of said unlawful, wilful and felonious conspiracy, so entered into as aforesaid by the above named defendants, that said plot and scheme to violate said Reed Amendment as aforesaid was to be carried out, carried on and effected by the following means, methods and plans, that is to say: That at certain cities, towns and places in the State of California, the exact cities, towns and places therein being to this Grand Jury unknown, the said defendants were to order and purchase intoxicating liquor for beverage purposes from persons whose names are to this Grand Jury unknown. That such intoxicating liquor, so

ordered and purchased as aforesaid, was thereupon and thereat to be placed in and about certain automobiles and in and about certain receptacles therein specially provided therefor, and that said automobiles containing said intoxicating liquor as aforesaid, were to be hauled and driven by said defendants to and into certain cities, towns and places in the State and District of Oregon, the exact cities, towns and places therein being to this Grand Jury unknown. That upon the arrival of said automobiles containing said intoxicating liquor as aforesaid and so hauled and driven to and into the State of Oregon as aforesaid, the said defendants were to receive, conceal and store the said intoxicating liquor, which said intoxicating liquor was to be thereafter sold and distributed in various cities in said State of Oregon, the exact places of sale and distribution thereof being to this Grand Jury unknown; that the said wilful, unlawful and felonious conspiracy, so entered into by the above named defendants as aforesaid, continued from the date of the conspiracy as aforesaid up to and including the 15th day of June, 1919. That at and during all the times between said dates as aforesaid, said unlawful, wilful and felonious conspiracy was continually in existence and in operation and that at and during all of said times, all of the above named defendants as aforesaid, continued to wilfully, unlawfully and feloniously conspire, combine, confederate and agree together to commit the said crime herein set forth.

And the Grand Jurors aforesaid, upon their oaths and affirmations aforesaid, do further find, charge, allege and present:

1. That in pursuance and in furtherance of said unlawful, wilful and felonious conspiracy, combination, confederation and agreement and to effect the object thereof, the said defendants on, to-wit: the 6th day of June, 1919, at Portland, in the State and District of Oregon, caused certain automobiles to be taken and driven from said City of Portland, in the State of Oregon, to a certain point in the State of California, the exact place thereof being to the Grand Jurors unknown, which said automobiles, so taken and driven as aforesaid, were to be used by said defendants in conveying intoxicating liquors for beverage purposes, which said intoxicating liquors as aforesaid, were to be ordered and purchased in the State of California and which said automobiles, so to be used as aforesaid, were to be thereafter driven from the State of California to the State of Oregon.

2. That in furtherance and in pursuance of the said unlawful and felonious conspiracy, combination, confederation and agreement and to effect the object thereof, said defendant George E. Knowlton, alias as aforesaid, and Florence May Knowlton, alias as aforesaid, on to-wit: the 10th day of June, drove a certain automobile, to-wit: a Stutz automobile bearing an Oregon license number, to-wit: 35,-

447, which said automobile then and there contained a quantity of intoxicating liquor for beverage purposes, to-wit: 234 quarts of whiskey, which said automobile containing said intoxicating liquor as aforesaid was by said above named defendants, driven from a point in California, the exact place thereof being to the Grand Jurors unknown, to Lakeview in the State and District of Oregon.

3. That in furtherance and in pursuance of the said unlawful and felonious conspiracy, combination, confederation and agreement and to effect the object thereof, said defendant Jerry Knowlton, alias as aforesaid, on to-wit: the 10th day of June, drove a certain automobile, to-wit: a Mercer automobile bearing a California license number, to-wit: 308789, which said automobile then and there contained a quantity of intoxicating liquor for beverage purposes, to-wit: 201 quarts of whiskey, which said automobile containing said intoxicating liquor as aforesaid was by the said above named defendant, driven from a point in California, the exact place thereof being to the Grand Jurors unknown, to Lakeview in the State and District of Oregon.

4. That in furtherance and in pursuance of the said unlawful and felonious conspiracy, combination, confederation and agreement and to effect the object thereof, the said defendants George E. Knowlton, alias as aforesaid, Florence May Knowlton, alias as aforesaid, and Jerry Knowlton, alias as aforesaid, on to-wit: the 10th day of June, 1919,

at a point about twenty-five miles from Lakeview, in the State and District of Oregon, had in their possession a quantity of intoxicating liquor for beverage purposes, to-wit: 435 quarts of whiskey, which said intoxicating liquor was packed in and about two certain automobiles then and there being driven by and in the custody and under the control of the said defendants, and which said intoxicating liquor so packed and contained in said automobiles as aforesaid, had theretofore and on said 10th day of June, 1919, been transported in interstate commerce, to-wit: from the State of California to the State of Oregon aforesaid.

All of which is contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

And the Grand Jurors aforesaid, upon their oaths and affirmations aforesaid, do further find, charge, allege and present:

COUNT TWO:

That GEORGE E. KNOWLTON, alias George W. Wilson; FLORENCE MAY KNOWLTON, alias Florence Wilson; JERRY KNOWLTON, alias Jerry Smith, alias James King, the defendants above named, on to-wit: the 10th day of June, 1919, did knowingly, wilfully and unlawfully, order, purchase and cause to be transported in interstate com-

merce, to-wit: from the State of California to Portland, in the State and District of Oregon and within the jurisdiction of this Court, a quantity of intoxicating liquor for beverage purposes, to-wit: 435 quarts of whiskey, which said intoxicating liquor as aforesaid, so caused to be transported in interstate commerce as aforesaid, was transported to and into a state, to-wit: Oregon, the laws whereof then and there prohibited the manufacture and sale therein of intoxicating liquor for beverage purposes, and which intoxicating liquor so as aforesaid, ordered, purchased and caused to be transported in interstate commerce as aforesaid, was not ordered, purchased and caused to be transported in interstate commerce as aforesaid for scientific, sacramental, medicinal and mechanical purposes, or for any purpose other than for beverage purposes, contrary to the form of the statute in such cases made and provided and against the peace and dignity of the United States of America.

Dated at Portland, Oregon, this 28th day of June, 1919.

A TRUE BILL.

WALTER GADSBY,
Foreman, United States Grand Jury.
BARNETT H. GOLDSTEIN,
Assistant United States Attorney.

[Endorsed]: Filed June 28, 1919, in open court, G. H. Marsh, Clerk.

Record of Arraignment.

AND AFTERWARDS, to-wit: on Saturday, the 19th day of July, 1920, the same being the ——— JUDICIAL day of the Regular July term of said Court; present the Honorable ROBERT S. BEAN, United States District Judge, presiding, the following proceedings were had in said cause, to-wit:

In the District Court of the United States for the District of Oregon.

The United States of America,

vs.

George E. Knowlton, alias George W. Wilson, Florence May Knowlton, alias Florence Wilson, and Jerry Knowlton, alias Jerry Smith, alias James King.

Now at this day come the plaintiff by Mr. Barnett H. Goldstein, Assistant United States Attorney, and the defendants, eGorge E. Knowlton, Florence May Knowlton and Jerry Knowlton, each in his own proper person and by Mr. John J. Beckman, of counsel. Whereupon said defendants being duly arraigned upon the indictment herein state to the Court that their true names are George E. Knowlton, Florence May Knowlton and Jerry Knowlton.

Record of Plea.

AND AFTERWARDS, to-wit: on Monday, the 11th day of August, 1919, the same being the 31st

JUDICIAL day of the Regular July Term of said Court; present the Honorable ROBERT S. BEAN, United States District Judge, presiding, the following proceedings were had in said cause, to-wit:

In the District Court of the United States for the District of Oregon.

The United States of America,
vs.
George E. Knowlton, et al.

Now, at this day, come the plaintiff by Mr. Charles W. Reames, Assistant United States Attorney, and the defendant Jerry Knowlton, in his own proper person and by Mr. John J. Beckman, of counsel, whereupon said defendant being duly arraigned upon the indictment herein, for plea thereto says he is not guilty.

Record of Plea.

AND AFTERWARDS, to-wit: on Tuesday, the 19th day of August, 1919, the same being the 38th JUDICIAL day of the Regular July Term of said Court; present the Honorable ROBERT S. BEAN, United States District Judge, presiding, the following proceedings were had in said cause, to-wit:

In the District Court of the United States for the District of Oregon.

The United States of America,

vs.

George E. Knowlton, Florence May Knowlton, et al.

Now, at this day, come the plaintiff by Mr. Bert E. Haney, United States Attorney, and the defendants George E. Knowlton and Florence May Knowlton, each in his and her own proper person, and by Mr. John J. Beckman, of counsel, whereupon said defendants for plea to the indictment herein each say that they are not guilty.

Record of Empanelling Jury.

AND AFTERWARDS, to-wit: on Tuesday, the 25th day of November, 1919, the same being the 20th JUDICIAL day of the Regular November Term of said Court; present the Honorable ROBERT S. BEAN, United States District Judge, presiding, the following proceedings were had in said cause, to-wit:

In the District Court of the United States for the District of Oregon.

The United States of America,

vs.

George Knowlton, alias Geo. W. Wilson, Florence May Knowlton, alias Florence Wilson, Jerry Knowlton, alias Jerry Smith, alias James King.

Now at this day come the plaintiff by Mr. Bar-

nett H. Goldstein, United States Attorney, and Mr. John C. Veatch, Assistant United States Attorney, and the defendants above named each in his own proper person and by Mr. John J. Beckman and Mr. John Manning, of counsel. Whereupon this being the day set for the trial of this cause now come the following named jurors to try the issues joined, viz.: C. Lewis Mead, Frederick E. Vrooman, X. M. Morgan, Alton W. James, Austin D. Parker, A. W. Bunn, Harry C. Moore, James W. Mason, C. M. Stites, Richard E. Ward, M. Z. Donnell and J. D. Smith, Sr.; twelve good and lawful men of the district who, being accepted by both parties and being duly impaneled and sworn, proceed to hear the evidence adduced.

Record of Verdict.

AND AFTERWARDS, to-wit: on Wednesday, the 26th day of November, 1919, the same being the 21st JUDICIAL day of the Regular November Term of said Court; present the Honorable ROBERT S. BEAN, United States District Judge, presiding, the following proceedings were had in said cause, to-wit:

In the District Court of the United States for the District of Oregon.

The United States of America

vs.

Geo. E. Knowlton, alias Geo. W. Wilson, Florence May Knowlton, alias Florence Wilson, Jerry Knowlton, alias Jerry Smith, alias James King.

And thereafter, said plaintiff being present by Mr. Barnett H. Goldstein, United States Attorney, and Mr. John C. Veatch, Assistant United States Attorney, and said defendants being present each in his own proper person and by Mr. John J. Beckman and Mr. John Manning, of counsel, said jury returns to the Court the following verdict, viz.:

"We, the Jury duly impaneled to try the above entitled cause, do find the defendant George E. Knowlton, alias George W. Wilson, disagree as charged in Count One of the Indictment, and guilty as charged in Count Two of the Indictment; and we find the defendant Florence May Knowlton, alias Florence Wilson, disagree as charged in Count One of the Indictment, and guilty as charged in Count Two of the Indictment, and we do further find the defendant Jerry Knowlton, alias Jerry Smith, alias James King, disagree as charged in Count One of the Indictment, and guilty as charged in Count Two of the Indictment herein.

Dated at Portland, Oregon, this 26th day of November, 1919.

AUSTIN D. PARKER, Foreman."

which verdict is received by the Court and ordered to be filed.

Record of Sentence.

AND AFTERWARDS, to-wit: on Wednesday, the 10th day of December, 1919, the same being the 32nd JUDICIAL day of the Regular November Term of said Court; present the Honorable ROBERT S. BEAN, United States District Judge, presiding, the following proceedings were had in said cause, to-wit:

In the District Court of the United States for the District of Oregon.

The United States of America

vs.

George E. Knowlton, Florence May Knowlton, and Jerry Knowlton.

Now at this day come the plaintiff by Mr. Barnett H. Goldstein, Assistant United States Attorney, and the defendants each in his own proper person and by Mr. John Manning and Mr. J. J. Beckman, of counsel. Whereupon this cause comes on to be heard upon the motions of said defendants in arrest of judgment and for a new trial herein. And the Court, having heard the arguments of counsel, and being fully advised in the premises,

IT IS ORDERED AND ADJUDGED that the motion of Florence May Knowlton for a new trial herein be and the same is hereby allowed, and that the verdict of the jury heretofore filed herein be and the same is hereby set aside as to her. And

IT IS FURTHER ORDERED AND ADJUDGED that the motions of George E. Knowlton and Jerry Knowlton in arrest of judgment and for a new trial herein be and the same are hereby denied. Whereupon on motion of said plaintiff for judgment against the said defendants George E. Knowlton and Jerry Knowlton upon the verdict of the Jury heretofore filed herein.

IT IS ADJUDGED that said George E. Knowlton and Jerry Knowlton each be imprisoned in the county jail of Multnomah County, Oregon, for the term of six months, and that each of them stand committed until this sentence be performed or until he be discharged according to law.

In the District Court of the United States for the District of Oregon.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

GEORGE E. KNOWLTON and JERRY KNOWLTON,
Defendants.

Petition for Writ of Error.

To the Honorable CHARLES E. WOLVERTON

and ROBERT S. BEAN, Judges of the above entitled Court:

And now comes George E. Knowlton and Jerry Knowlton, the defendants herein, and by their attorneys, Manning & Beckman, respectfully show that on the 26th day of November, 1919, a jury duly empaneled herein found your petitioners guilty of the violation of the Act of Congress approved March 3rd, 1917 (37 Stat. L. 1069), known as the Reed Amendment, upon which said verdict sentence was passed and final judgment entered against your petitioners on the 10th day of December, 1919.

Your petitioners feeling themselves aggrieved by said verdict and judgment in which judgment and proceedings had prior thereto, certain errors were committed to the prejudice of these defendants, all of which will more fully appear from the bill of exceptions and the assignment of errors filed with this petition, do herewith petition the Honorable Court for an order allowing them to prosecute a writ of errors to the United States Circuit Court of Appeals for the Ninth Circuit under the rules and laws of the United States in such case made and provided.

WHEREFORE, these defendants pray that a Writ of Error may issue in this behalf out of the United States Circuit Court of Appeals for the Ninth Circuit for the correction of the errors so

complained of and that an order be made approving the bond of your petitioners and staying all further proceedings until determination of such Writ of Error by said Circuit Court of Appeals, and that a transcript of the records, proceedings and papers in this cause, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit.

GEORGE E. KNOWLTON,
JERRY KNOWLTON,
Defendants.
MANNING & BECKMAN,
Attorneys for Defendants.

State of Oregon,
County of Multnomah,—ss.

Due and legal service of the foregoing petition is hereby accepted at the City of Portland, this 19th day of March, 1920.

HALL S. LUSK,
Asst. United States Attorney.

[Endorsed]: United States District Court, District of Oregon. Filed April 19, 1920. G. H. Marsh, Clerk.

In the District Court of the United States for the District of Oregon.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GEORGE E. KNOWLTON and JERRY KNOWLTON,

Defendants.

Assignment of Errors.

George E. Knowlton and Jerry Knowlton, the defendants in the above entitled action and plaintiffs in error herein, having petitioned for an order from said Court permitting them, and each of them, to procure a Writ of Error to this Court directed from the United States Circuit Court of Appeals for the Ninth Circuit from the judgment and sentence made and entered in said cause against the said plaintiffs in error, and each of them, and petitioners herein now make and file with the said petition the following assignment of errors herein upon which they, and each of them, will rely for a reversal of the said judgment and sentence upon the said writ, and which said errors, and each and every of them, are to the great detriment, injury and prejudice of the said plaintiffs in error, and each of them, and in violation of the rights confererd upon them, and each of them, by law; and plaintiffs in error say that in the record and proceedings of the above entitled cause upon the hearing and determination thereof in the District Court

of the United States for the District of Oregon there are manifest errors in this, to-wit:

I.

That the Court erred in over-ruling the following motion made by the defendant, George E. Knowlton, at the close of the Government's case:

> "I also move the Court to instruct the jury to bring in a verdict of acquittal as to Count 2, the violation of the Reed Amendment. First, for the reason that there has been no proof that these defendants, or any of them, ordered, purchased, or caused to be transported in interstate commerce any intoxicating liquor from California into Oregon; nor has there been any proof of the purpose for which the intoxicating liquors were to be used; and I might also say there is a variance between the indictment and the proof. The indictment says they ordered, purchased and caused to be transported in interstate commerce from the State of California to Portland, in the State and District of Oregon. The Grand Jury having alleged definitely that they were transporting this to Portland, I think they are confined to that allegation. There has been no proof whatsoever that these liquors, if there were any at all, were to be transported to Portland, or anywhere near Portland, or that these people had ever been in Portland."

To which ruling of the Court the defendant duly excepted.

II.

That the Court erred in over-ruling the motion for a directed verdict made by the defendant, Jerry Knowlton, which said motion is the same motion as fully recited in assignment of errors number I. To which ruling of the Court the said defendant duly excepted.

III.

That the Court erred in over-ruling the motion of the defendant, George E. Knowlton, for a directed verdict, made at the close of all the testimony in the case, which said motion is the same as the motion fully recited in assignment of errors number I. To which ruling of the Court the said defendant duly excepted.

IV.

That the Court erred in over-ruling the motion of the defendant, Jerry Knowlton, for a directed verdict, made at the close of all the testimony in the case, which said motion is the same as the motion fully recited in assignment of errors number I. To which ruling of the Court the said defendant duly excepted.

V.

That the Court erred in refusing the requests

of the defendants, George E. Knowlton and Jerry Knowlton, and each of them, to instruct the jury as follows:

"Circumstantial evidence is the evidence of certain facts from which are to be inferred the existence of other material facts bearing upon the question at issue or fact to be proved. This evidence is legal and competent, and, when of such a character as to exclude every reasonable doubt of defendants' innocence, is entitled to as much weight as direct evidence. When a conviction is sought on circumstantial evidence alone, it must not only be shown by preponderance of evidence that the facts are true, but they must be such as are absolutely opposed, upon any reasonable ground of reasoning with the innocence of the accused, and incapable of explanation upon any reasonable hypothesis other than that of the guilt of the accused. The degree of certainty must be equal to that of direct testimony and, if there is any single fact proved to your satisfaction by a preponderance of evidence which is inconsistent with defendants' guilt, this is sufficient to raise a reasonable doubt, and the jury should acquit the defendant. In order to justify the inference of legal guilt from circumstantial evidence, the proof must be absolutely incompatible with the innocence of the accused, and incapable of explanation upon any other reasonable hypothesis than that of his

guilt. If there is any reasonable doubt as to reality of the connection of the circumstances of evidence with the facts to be proved, or as to the completeness of the proof, or as to the proper conclusion to be drawn from the evi-evidence, it is safer to err in acquitting than in convicting."

To which refusal of the Court to so instruct the jury, the said defendants, and each of them, duly excepted.

VI.

The Court erred in over-ruling the motion of the defendants, George E. Knowlton and Jerry Knowlton, and each of them, for a new trial, which motion was as follows:

"Comes now George E. Knowlton and Jerry Knowlton, the above named defendant, each for themselves, by their attorneys, Manning & Beckman, within the time allowed by Court, and move the Court for a new trial on behalf of each of said defendants, upon the following grounds and for the following reasons:

I.

That count 2 of the indictment does not state facts sufficient to constitute a crime.

II.

That the Court erred in refusing to direct a

verdict of not guilty, as to each of the said defendants, at the close of the government's evidence.

III.

That the Court erred in refusing to direct a verdict of not guilty as to each of said defendants, at the close of all the evidence.

IV.

That the evidence was insufficient to justify a verdict of guilty against George E. Knowlton on count 2 of the indictment.

VI.

That the evidence was insufficient to justify a verdict of guilty against Jerry Knowlton on count 2 of the indictment.

VII.

That the verdict of the jury against George E. Knowlton was against the law as laid down by the Court.

IX.

That the verdict of the jury against Jerry Knowlton was against the law as laid down by the Court."

Assignment VII.

That the Court erred in over-ruling the motion of the said defendants, George E. Knowlton and Jerry Knowlton, and each of them, for an order arresting judgment, which said motion was as follows:

"And now after verdict against the defendants, George E. Knowlton and Jerry Knowlton, and before sentence, come the said defendants, and each of them for themselves, by their attorneys, Manning & Beckman, and move the Court here to arrest judgment herein and not pronounce judgment against the said defendants, or either of them, for the following reasons:

I.

That count 2 of the indictment does not state facts sufficient to constitute a crime.

II.

That the Court erred in refusing to direct a verdict of not guilty, as to each of the said defendants, at the close of the government's evidence.

III.

That the Court erred in refusing to direct a ver-

dict of not guilty, as to each of the said defendants, at the close of all of the evidence.

IV.

That the evidence was insufficient to justify a verdict of guilty against George E. Knowlton on count 2 of the indictment.

VI.

That the evidence was insufficient to justify a verdict of guilty against Jerry Knowlton on count 2 of the indictment.

VII.

That the verdict of the jury against George E. Knowlton was against the law as laid down by the Court.

IX.

That the verdict of the jury against Jerry Knowlton was against the law as laid down by the Court."

Assignment VIII.

That the Court erred in entering a judgment of conviction and sentencing each of the said defendants to confinement in the County Jail of Multnomah County, Oregon, for a period of six months.

WHEREFORE, on account of the errors above assigned, the said judgment against each of the said defendants ought to have been given for the said defendants, and each of them, and against the United States of America, now the said defendants, and each of them, pray that the judgment of the said Court be reversed and the sentence herein imposed upon the said defendants, and each of them, be set aside, and that this cause be remanded to the said District Court and such directions be given that the above errors may be corrected and law and justice done in the matter.

Dated this 19th day of April, 1920.

MANNING & BECKMAN,
Attorneys for Defendants.

Service acknowledged April 19th, 1920.

HALL S. LUSK,
Assistant United States Attorney.

[Endorsed]: United States District Court, District of Oregon. Filed April 19, 1920. G. H. Marsh, Clerk.

In the District Court of the United States for the District of Oregon.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

GEORGE E. KNOWLTON and
JERRY KNOWLTON,
Defendants.

Order Allowing Writ of Error.

Now, at this day, come the defendants in the above entitled cause by Manning & Beckman, their counsel, and present to the Court their petition praying for the allowance of a Writ of Error to be issued out of the United States Circuit Court of Appeals for the Ninth Circuit to review the judgment of this Court entered in said cause, and move the Court for an order allowing the said petition:

On consideration whereof, IT IS ORDERED that the Writ of Error issue as prayed for in said petition.

It is further ORDERED that all proceedings in the above entitled District Court be stayed, superseded and suspended until the final disposition of the Writ of Error in the aforesaid United States Circuit Court of Appeals for the Ninth Circuit, upon each defendant filing an undertaking in the sum of Fifteen Hundred ($1,500.00) Dollars to be approved by the Court.

Dated at Portland, Oregon, this 19th day of April, 1920.

R. S. BEAN, Judge.

[Endorsed]: United States District Court, District of Oregon. Filed April 19, 1920. G. H. Marsh, Clerk.

In the District Court of the United States for the District of Oregon.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

GEORGE E. KNOWLTON and
JERRY KNOWLTON,
Defendants.

Bond of Defendant, George E. Knowlton, on Writ of Error.

KNOW ALL MEN BY THESE PRESENTS, That we, George E. Knowlton, as principal, and John Rometsch and Alfred A. Closset, as sureties, are held and firmly bound unto the United States of America in the penal sum of One Thousand Five Hundred ($1,500.00) Dollars, for the payment of which, well and truly to be made, we bind ourselves and each of us, our heirs, executors, administrators, successors and assigns, forever firmly by these presents.

Sealed with our seals and dated and signed this 9th day of April, 1920.

WHEREAS, at the November term, 1919, of the District Court of the United States for the District of Oregon, in a cause therein pending, wherein the United States was plaintiff and the said George E. Knowlton was defendant, a judgment was rendered against the said defendant on the 10th day of December, 1919, wherein and whereby the said defendant was sentenced to be imprisoned in the County Jail of Multnomah County at Portland, Oregon, for the period of six months, and the said defendant has prayed for and obtained a Writ of Error from the United States Circuit Court of Appeals for the Ninth Circuit to review the said judgment and sentence in the aforesaid action, and the citation directing the United States to be and appear in the said United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, California, thirty days from and after the date of said citation has issued, which citation has been duly served.

NOW, THE CONDITION OF THIS OBLIGATION IS SUCH, That if the said George E. Knowlton shall appear either in person or by attorney in the said Circuit Court of Appeals for the Ninth Circuit on such day or days as may be appointed for the hearing of said cause in said Court, and prosecute his writ of error and abide by the orders made by the said United States Circuit Court of Appeals, and shall surrender himself in execution

as said Court may direct, if the judgment and sentence against him shall be affirmed, then this obligation shall be void, otherwise to be and remain in full force and effect.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this 9th day of April, 1920.

JERRY KNOWLTON, (Seal)
Principal.
JOHN ROMETSCH, (Seal)
Surety.
ALFRED A. CLOSSET, (Seal)
Surety.

United States of America,
District of Oregon,—ss.

We, John Rometsch, residing at 300 Benton Street, Portland, Oregon, each being first duly sworn, for himself says: That I am a resident and freeholder in the State of Oregon, and that I am worth the sum of One Thousand Five Hundred ($1,500.00) Dollars over and above all my just debts and liabilities, and exclusive of property exempt from execution.

JOHN ROMETSCH.

Subscribed and sworn to before me this 9th day of April, 1920.

G. H. MARSH,

Clerk United States District Court, District of Oregon.

United States of America,
District of Oregon,—ss.

I, Alfred A. Closset, residing at 514 Hancock Street, Portland, Oregon, being duly sworn, depose and say that I am one of the sureties in the foregoing bond, that I am a resident and freeholder within said District, and that I am worth, in property situated therein, the sum of Fifteen Hundred ($1,500.00) Dollars, over and above all my just debts and liabilities, exclusive of property exempt from execution.

ALFRED A. CLOSSET.

Subscribed and sworn to before me this April 14th, 1920.

G. H. MARSH,
Clerk United States District Court, District of Oregon.

The above bond approved April 19, 1920.

R. S. BEAN,
U. S. District Judge.

[Endorsed]: Filed April 19, 1920. G. H. Marsh, Clerk.

In the District Court of the United States for the District of Oregon.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

GEORGE E. KNOWLTON and
JERRY KNOWLTON,
Defendants.

Bond of Defendant, Jerry Knowlton, on Writ of Error.

KNOW ALL MEN BY THESE PRESENTS, That we, Jerry Knowlton, as principal, and John Rometsch and A. A. Clossett, as sureties, are held and firmly bound unto the United States of America in the penal sum of One Thousand Five Hundred ($1,500) Dollars, for the payment of which, well and truly to be made, we bind ourselves and each of us, our heirs, executors, administrators, successors and assigns, forever firmly by these presents.

Sealed with our seals and dated and signed this 9th day of April, 1920.

WHEREAS, at the November term, 1919, of the District Court of the United States for the District of Oregon, in a cause therein pending, wherein the United States was plaintiff and the said Jerry Knowlton was defendant, a judgment was rendered against the said defendant on the 10th day of December, 1919, wherein and whereby the said de-

fendant was sentenced to be imprisoned in the County Jail of Multnomah County at Portland, Oregon, for the period of six months, and the said defendant has prayed for and obtained a Writ of Error from the United States Circuit Court of Appeals for the Ninth Circuit to review the said judgment and sentence in the aforesaid action, and the citation directing the United States to be and appear in the said United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, California, thirty days from and after the date of said citation has issued, which citation has been duly served.

NOW, THE CONDITION OF THIS OBLIGATION IS SUCH, That if the said Jerry Knowlton shall appear either in person or by attorney in the said Circuit Court of Appeals for the Ninth Circuit on such day or days as may be appointed for the hearing of said cause in said Court, and prosecute his writ of error and abide by the orders made by the said United States Circuit Court of Appeals, and shall surrender himself in execution as said Court may direct, if the judgment and sentence against him shall be affirmed, then this obligation shall be void, otherwise to be and remain in full force and effect.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this —— day of April, 1920.

JERRY KNOWLTON (Seal).
Principal.
JOHN ROMETSCH (Seal).
Surety.
ALFRED A. CLOSSET (Seal).
Surety.

United States of America,
District of Oregon,—ss.

We, John Rometsch, residing at 300 Benton St., Portland, Oregon, first duly sworn for himself says: That I am a resident and freeholder in the State of Oregon, and that I am worth the sum of One Thousand Five Hundred ($1,500.00) Dollars over and above all my just debts and liabilities, and exclusive of property exempt from execution.

JOHN ROMETSCH.

Subscribed and sworn to before me this 9th day of April, 1920.

G. H. MARSH,
Clerk United States District Court, District of Oregon.

United States of America,
District of Oregon,—ss.

I, Alfred A. Closset, residing at 514 Hancock Street, Portland, Oregon, being duly sworn, depose

and say that I am one of the sureties in the foregoing bond, that I am a resident and freeholder within said District, and that I am worth, in property situated therein, the sum of Fifteen Hundred ($1,500.00) Dollars, over and above all my just debts and liabilities, exclusive of property exempt from execution.

ALFRED A. CLOSSET,

Subscribed and sworn to before me this 14th day of April, 1920.

G. H. MARSH,
Clerk United States District Court, District of Oregon.

The above bond approved April 19, 1920.

R. S. BEAN,
U. S. District Judge.

[Endorsed]: Filed April 19, 1920. G. H. Marsh, Clerk.

In the District Court of the United States for the District of Oregon.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

GEO. E. KNOWLTON and
JERRY KNOWLTON,
Defendants.

BILL OF EXCEPTIONS.

BE IT REMEMBERED, that on the 24th day of

November, 1919, at a stated term of said Court, beginning and held in Portland, Oregon, before the Hon. Robert S. Bean, District Judge, presiding, the above entitled cause came on to be heard before said Court and the jury impaneled therein. The United States appearing by Mr. B. H. Goldstein, Assistant United States Attorney for said District; and the defendants appearing in person, and represented by their counsel, Mr. John Manning and Mr. John J. Beckman. Florence Knowlton, wife of defendant Geo. E. Knowlton, was also a defendant.

WHEREUPON the following proceedings were had:

T. M. Word, a witness on behalf of the Government, after being duly sworn, testified as follows: That he was a special agent of the Department of Justice and had been since November 1, 1918. In June, 1919, he was at Lakeview, Oregon, and on the 10th of said month left the said city at four o'clock A. M. in company with the sheriff of Lake County, Mr. Woodcock and wife, a 13-year-old boy and a prisoner. They were in an automobile and were going to Bend and Portland. On the road to Bend, about 20 to 23 miles north of Lakeview, the witness saw two automobiles on the right hand side of the road, and he asked the sheriff to stop so he could examine the machines and ascertain if there were any "booze" in them; he looked the machines over and took the names of same; one had a California license and one an Oregon license; one of the cars

was of the Stutz make and the other was a Mercer. George Knowlton and his wife, Florence, were asleep in the front seat of the Stutz car, and defendant Jerry Knowlton was in the back part of the Mercer. The witness then testified: "I woke up the people in the Stutz car and asked them how much liquor they had. and he said he only had a small amount for his own use, and I said how much, and I think they said about 15 or 20 cases, and then I awoke them; I got them out of the machine and got the man out of the other machine. The one in the Stutz car gave his name as Geo. W. Wilson, the one in the Mercer car gave me the name of James King. Then I looked in and under the mattress and I saw that both of them was loaded with liquor, and the sheriff got out and came over with me at the time I took the number of the machines, and then I told them that I was a special agent for the government, and told them who I was, and they knew of me; they had lived here."

The witness then testified that he took Mrs. Wilson out of the Stutz car and put her into the car with the sheriff's wife, his son and the prisoner, and put the sheriff into the Stutz car and started on toward Bend. In the Mercer car there was a wide mattress over the top and some blankets over that and a box of food and clothing, and the other car had some blankets over it, and some gunny sacks. The place where the defendants were found was about 35 miles from the California State line

in the State of Oregon. When the several machines above mentioned got near Paisley they all stopped and Mrs. Wilson got out of the sheriffs' car in which she was riding, saying that she felt sick. She then got into the Stutz car with her husband and the sheriff; afterward the car stopped and George Knowlton and the sheriff got out, and then Mrs. Knowlton started to run away with the machine. We pursued her in Jerry's car, Jerry driving, for some distance, about five or six miles, when we caught up with her. Then they all went back to the main road and Jerry Knowlton took out a box of provisions from his machine and made some coffee, and I ate a beef heart sandwich; the provisions were in a wooden box; "there were quite a lot of sandwiches, and there was some kind of stuff in it. I don't remember."

Q. Did you notice what kind of liquor they had there?

A. Yes, they had some Sunnybrook, some brandy and some old Sage pints and quarts.

"We then proceeded to Bend; we left there about a quarter to eight, and the sheriff left me there and came with his prisoner and family to Portland. The sheriff at Bend came to the hotel and we took the liquor to the jail, unloaded and counted it; there were 234 bottles in the Stutz car and 201, I think, in the Mercer; I am not sure. Some of the bottles was whiskey, and a few bottles of brandy and a few bottles of gin. The bottles had revenue stamps on

them. We unloaded the Stutz liquor in one cell and the Mercer in another cell and turned it over to the sheriff for the night and put the men in jail. We left Bend at 2:20 the next day and went to The Dalles. I took George Knowlton with me and Jerry Knowlton went with another person."

The witness then testified that upon arriving at The Dalles he took George Knowlton in a restaurant with him, and left the Stutz car containing the liquor in front of the restaurant, where he could watch same. While in the restaurant a man got into the machine and witness ran out of the restaurant and fired several shots and hit a building. The car was later recovered about 26 miles from The Dalles near Dufur; the booze had been taken out and the car left stranded. The Mercer car came from Bend by another road and got as far as the Deschutes river; then witness went up with the Stutz car and loaded the stuff out of the Mercer car and brought it to The Dalles.

ON CROSS EXAMINATION the witness testified that at the time Mrs. Knowlton got out of the sheriff's car, as stated in his direct examination, she complained that the Ford, the sheriff's car, was hard riding and that she was not feeling well. The prisoner in the Ford car riding with her was a wife murderer and was being taken to the state penitentiary to serve a sentence upon conviction for that crime. Several bottles were offered in evidence containing liquor, and the witness stated that this

came from the Mercer car. No bottles out of the Stutz car were produced in evidence, nor were any of them in possession of witness.

Q. Then you don't know whether he, George Knowlton, had whiskey, brandy, gin, or any thing in his car, except you know he had bottles?

A. I know he had whiskey and gin.

Q. Did you see, as a matter of fact, any of it?

A. No; I never touched it.

Q. How do you know he had whiskey?

A. I can tell a bottle of whiskey when I see it.

Q. I know you can tell a bottle from the label on the bottle, but is that proof to you; would you swear to it that it was whiskey?

A. I can swear that he begged me all night to let him open a bottle and let him take a drink.

Q. That is all right, but I am asking you if you can swear positively that he had whiskey in that bottle? A. I just told you.

Q. You didn't taste it?

A. No, I never tasted it.

Q. And he might have had a bottle of liquor?

A. He begged me to take a drink with him, but I would not do it.

Q. Did he have a bottle open? A. Yes.

Q. Did he take a drink?

A. I don't remember; I don't think he took a drink that night.

Witness further testified that he had never seen the defendants in the State of Califorina.

Q. Then you don't know from whom they bought this liquor, do you?

A. No, they did not tell; they told, like all the rest of them, that they bought it in Oregon.

The witness further testified that he did not have a bottle of any description from the Stutz car; that the defendants had a fishing basket and some fishing tackle with them.

E. E. WOODCOCK, called as witness on behalf of the Government, and being sworn, testified as follows:

That he was the sheriff of Lake County, Oregon; that on June 10, 1919, he accompanied special agent, Tom Word, from Lakeview to Bend; that he was on his way to Salem with a prisoner; that he was accompanied by his wife and son, the said prisoner and Tom Word; they were all riding in a Ford; they left Lakeview at four A. M. and about 25 miles north of Lakeview they saw two big machines by the side of the road; that they thereupon stopped

and Word and he jumped out of the Ford; he stepped to one machine and Word to the other; the side curtains were all down and the occupants were asleep; they woke them up and asked them what they were loaded with, and they said they had a little booze for their own use; the machines were heavily loaded with booze; the occupants of the car were George Knowlton and his wife in one car, and Jerry Knowlton in the other car. We placed them under arrest and decided to bring them to Portland. The prisoner who was being taken to the penitentiary, was put into the Ford car with witness's wife and boy and Mrs. Knowlton. The witness got into one of defendants' cars and Tom Word into the other. The witness stated that he tasted some whiskey from a bottle which was in the Stutz car.

ON CROSS EXAMINATION the witness said that the prisoner having been convicted of murder, he was taking him to the penitentiary. At the time he stopped to look at the cars belonging to defendants, he and Special Agent Word were looking for certain other automobiles, but not these. Both George Knowlton and Jerry Knowlton told the witness and Tom Word that they bought the liquor which was in their cars from some one in Oregon a short while before; they said there was no Federal charge against them as they got the liquor in Oregon. As far as the witness knew, they might have got it in Oregon.

ON RE-DIRECT EXAMINATION, the witness

testified that the road where the defendants were found was the main traveled road from Lakeview to Bend. Lakeview is 15 miles from the nearest California point; the nearest California town to Lakeview is Fairport; the nearest large California town on the road to Lakeview is Alturas, which is about 45 miles from the boundary line of Oregon.

ON RE-CROSS EXAMINATION, the witness testified that there were no other roads running into the road where the defendants were found north of Lakeview, except roads leading from ranches. There are two roads leading from Lakeview to Paisley, Oregon, and there are also roads from Klamath Falls, Oregon, to Lakeview and from Silver Lake, Oregon, to Lakeview.

H. W. LAUGENOUR, a witness called on behalf of the government, being first duly sworn, testified as follows:

That in the month of June, 1919, he was at Davis Creek, California; this town is about 25 miles north of Alturas and about 12 or 15 miles south of the Oregon State line; the witness further testified that on June 9, 1919, two men and a woman came into his store at Davis Creek; he identified Jerry Knowlton as being one of the men, and a spectator among the audience in the court room (and not one of the defendants) as the other man, and was not able to identify the woman; the woman had on a khaki uniform when he saw her in the store and wore leather

leggings; the taller of the men, whom the witness identified as Jerry Knowlton, came to the counter and purchased some sardines, sausages, cheese and oranges; afterward he saw two machines through the window of his store, one of which he described as a Stutz and the other as a Mercer. The witness was in the automobile business from 1903 to 1912.

Q. When was it this took place?

A. Some time near lunch; I don't know exactly.

ON CROSS EXAMINATION, the witness testified that these people were strangers to him; that he had never seen them before; that the government special agent called upon him and showed him photographs of the defendants; witness stated that he was unable to identify the wife of George Knowlton (who was one of the defendants being tried), as the woman he saw in the store. When the witness went to the window to look at the automobile, some one having called his attention to them, they were from 75 to 100 feet away on a side street, one on each side; they were not on the street in front of his store. The front ends of the cars were not facing him, and he got a side view of them.

EUGENE B. ASH, called as a witness on behalf of the Government, and being sworn, testified as follows:

June 9, 1919, as near as he could recall, he was in the garage business in that town; that on said date,

That he lived at Alturas, California; that on between 1 and 2 o'clock in the afternoon, a Mercer car drove into his garage with defendant, Jerry Knowlton, therein; he wanted to know if witness could fix the car, and witness found a broken frame on it, which he repaired. The witness knew that the car was heavily loaded because it broke through the floor at one place; the car was fixed about 10 P. M. of the same day. After the car was finished Jerry Knowlton took out a "partly drank" bottle of brandy, and the witness, his father and Jerry Knowlton finished up the bottle of brandy and the bottle was left in the shop. As near as witness could recollect Knowlton went around to the right hand side of the car and reached in and pulled the bottle out; the witness never paid particular attention to how he got the bottle. The back of the car seemed to be pretty well filled up, but it was covered over and witness did not know what was inside. The witness identified the bottle which he said he thought was the same one which had been left in the shop from which they had partaken, as aforesaid. Next day the witness' brother threw the bottle outside, and when Special Agent Word came he looked about for it and found it; the label on the bottle was Three Star Claremont Brandy. Defendant Jerry Knowlton was at the garage most of the time while the car was being repaired.

ON CROSS EXAMINATION, the witness testified that it was not against the law to have liquor in California at that time; that the brother of wit-

ness threw the bottle from which they all partook outside the shop in a corner between two buildings and that was the way he came to find it afterward when the agent wanted to know if he could find it; that this was some time afterward. Witness never had the bottle in his possession from the time it was thrown out of the shop, as above stated, until Mr. Word came and interviewed him, when it was turned over to Mr. Word. Witness could not identify the bottle as being the identical one, but that it was just like the one from which they drank.

On further cross examination, witness testified that the Mercer car would weigh about 4200 or 4300 pounds; that the garage had a wooden floor which was old; and that before this time a two-ton truck had also broken through the floor. The building was about 10 or 15 years old and the floor was the same age as the building.

T. M. WORD, again called as witness by the Government, testified that he had procured the bottle from the witness Ash, and that it was the same one concerning which testimony had been given by Mr. Ash, whereupon the same was offered and received in evidence. Mr. Word called upon Mr. Ash and obtained the bottle about two months after the arrest of the defendants; the witness said that Mr. Ash had said that his brother had put the bottle outside, and that Ash then went outside accompanied by the witness and picked up the bottle off the ground at a place between two buildings.

F. L. KESER, a witness called on behalf of the Government, being sworn, testified as follows:

That on June 9, 1919, he was in business at Alturas, California, the name of his business being the Alturas Tire & Battery Co.; that on said date he recalled a Stutz car being there; that a man and woman were in same and the woman was dressed in a khaki suit. He saw the Stutz car between ten and eleven o'clock on the morning of that date; he repaired a tire and furnished gasoline for the people in the Stutz car. The back of the car was piled up level with the back seat and covered over with a blanket or canvas. The witness was unable to identify any of the defendants as being the persons who were in the Stutz car at that time.

ON CROSS EXAMINATION, the witness testified that it was not an unusual thing to see a car covered up and full of valises, bedding, etc., when driven by tourists. The witness did not recognize the defendant George Knowlton or his wife, or defendant, Jerry Knowlton, as being any of the parties who were in or were driving the Stutz car. He expressly stated that Mrs. Florence Knowlton was not the woman that he had reference to. The witness distinctly remembered the Stutz car by the way it was painted. It had white wire wheels and was of a kind of maroon color with gold stripes and the lights were painted white. Witness was not absolutely sure the color was maroon, but knew the same was red.

HENRY KOCK, called as witness on behalf of the Government, being sworn, testified as follows:

That he lived in Alturas, California, and in June 1919, was running a lunch counter there; that on the 8th or 9th of June two men came to his lunch counter and purchased 20 sandwiches — ten beef heart and ten pork sandwiches; the sandwiches were placed in a small spaghetti box. Witness recognized Jerry Knowlton as being one of the men who purchased the sandwiches, but could not state as to who the other man was. The witness thought that Jerry Knowlton came in a machine because he heard fellows make the remark about two nice big machines. He did not see the machines nor who occupied them.

ON CROSS EXAMINATION, witness stated that the sale of sandwiches was for cash. He stated that Jerry Knowlton was not pointed out to him, but he was shown Jerry's picture by Mr. Word in California, and also since he came to Portland to testify as a witness. The witness was also unable to recognize George Knowlton as being present at the time said sandwiches were sold. Witness was busy waiting on other customers at time of sale and it probably took him half an hour before the sandwiches were put up and delivered, at the time his attention was divided between different customers. Witness further testified that Mr. Word came to California and showed him a picture and said, Did you ever see this man in here? And I said, I think

I have; and he said look again, and I looked again and said, I am very sure this is the man I sold sandwiches to.

Q. Never saw the man in your life before?

A. No sir; but when I see a man's picture I can pretty near recognize him.

Q. You never thought of this man from the time he bought the sandwiches and went out, until Mr. Word came in and asked you if you recognized the picture?

A. No, sir; the sandwiches were purchased between eleven and one o'clock in the day time and on the 8th or 9th of the month.

Witness kept no track of the number of sandwiches sold, except an item in his account book that there were 20 sandwiches sold on the 8th and 9th of June, without itemizing the particular kind.

The Government then rested.

Exception I.

WHEREUPON the defendants, in due and proper season, by their counsel, then moved the Court for an instructed verdict as follows:

"I also move the Court to instruct the jury to bring in a verdict of acquittal as to Count 2, the violation of the Reed Amendment. First, for the

reason that there has been no proof that these defendants, or any of them, ordered, purchased, or caused to be transported in interstate commerce any intoxicating liquor from California into Oregon; nor has there been any proof of the purpose for which the intoxicating liquor was to be used; and I might also say there is a variance between the indictment and the proof. The indictment says they ordered, purchased and caused to be transported in interstate commerce from the State of California to Portland, in the State and District of Oregon. The Grand Jury having alleged definitely that they were transporting this to Portland, I think they are confined to that allegation. There has been no proof whatsoever that these liquors, if there were any at all, were to be transported to Portland, or any where near Portland, or that these people had ever been in Portland.

COURT: I don't think it necessary to take up any more time on that. In my judgment there is sufficient evidence in this case to call upon the jury to determine these disputed questions raised by the plea of not guilty, and under these circumstances it would not be proper or just for the Court to comment upon the testimony in any shape or form. The motion, therefore, will be overruled without any further comment.

MR. BECKMAN: Exception, if Your Honor please.

COURT: Certainly.

The defendant then called T. M. WORD as a witness, he having been previously sworn, and he testified as follows.

That on the 10th day of June, 1919, when he arrested the defendant he took charge of the Stutz car and brought the same to Portland, put it in Therklesen's garage, where it had been ever since and was at the time of trial; that it had been in the Government's possession ever since the said arrest, and nothing had been done to it, either by himself or on behalf of the Government, in the way of painting, or otherwise, since the arrest.

L. E. THERKELSEN, being called as witness by defendants, being sworn, testified as follows:

That he was in the automobile business in Portland and that Mr. Word had placed in his possession a Stutz car owned by defendant George Knowlton, with instructions to keep the same until he heard from Mr. Word; and that ever since the same had been in his possession there had been nothing done to it in the way of painting; that the color of the wheels of the car was black and the body red; that there were no gold stripes, or any other stripes. The fenders were black and the body painted red.

Thereupon the defendants rested.

Exception II.

Whereupon the following proceedings were had;

the defendants, in due and proper season by their counsel, made the following motion:

MR. BECKMAN: I desire at this time to renew my motion for a directed verdict as to each count in the indictment on the same ground and for the same reasons that I stated in my motion at the close of the Government's case, with the understanding that this motion at this time covers all the objections made at that time.

WHEREUPON the Court over ruled said motion, and the defendants requested and were allowed an exception.

Exception III.

WHEREUPON the defendants in proper time and season requested the Court to instruct the jury as follows:

Circumstantial evidence is the evidence of certain facts from which are to be inferred the existence of other material facts bearing upon the question at issue or facts to be proved. This evidence is legal and competent, and, when of such a character as to exclude every reasonable doubt of defendants' innocence, is entitled to as much weight as direct evidence. When a conviction is sought on circumstantial evidence alone, it must not only be shown by preponderance of evidence that the facts are true, but they must be such as are absolutely op-

posed, upon any reasonable ground of reasoning with the innocence of the accused, and incapable of explanation upon any reasonable hypothesis other than that of the guilt of the accused. The degree of certainty must be equal to that of direct testimony and, if there is any single fact proved to your satisfaction by a preponderance of evidence which is inconsistent with defendants' guilt, this is sufficient to raise a reasonable doubt, and the jury should acquit the defendant. In order to justify the inference of legal guilt from circumstantial evidence, the proof must be absolutely incompatible with the innocence of the accused, and incapable of explanation upon any other reasonable hypothesis than that of his guilt. If there is any reasonable doubt as to reality of the connection of the circumstances of evidence with the facts to be proved, or as to the completeness of the proof, or as to the proper conclusion to be drawn from the evidence, it is safer to err in acquitting than in convicting.

WHEREUPON the Court declined, neglected and refused to instruct the jury as was requested, and through the failure, neglect and refusal of the Court to so instruct, the defendants, in due and proper time and manner, requested, and were allowed an exception as to said requested instruction.

WHEREUPON the Court instructed the jury as follows:

"Gentlemen of the Jury:

A law of the United States provides that who-

ever shall order, purchase or cause intoxicating liquors to be transported in interstate commerce, except for scientific, sacramental or medicinal purposes, into any state or territory, the laws of which state or territory prohibit the manufacture or sale therein of intoxicating liquors shall be punished as provided in the statute. To come within the provisions of this statute it is necessary that the transportation of intoxicating liquors be from one state into another state, the laws of which prohibit the manufacture or sale. The laws of Oregon prohibit the manufacture and sale of intoxicating liquors and, therefore, it is a violation of this statute for any person to transport from another state into Oregon intoxicating liquors. Another statute of the United States provides that if two or more persons conspire either to commit an offense against the United States or to defraud it in any manner and one or more of such parties do any act to effect the object of the conspiracy, each of the parties shall be guilty of the crime and punished as provided in the statute.

The indictment in this case charges the three defendants on trial, in the first count, with violation of Section 37, and in count two with the violation of the statute that I first read to you.

The first count in the indictment charges in substance that in January, or about January, 1919, the three defendants entered into a conspiracy or unlawful agreement to transport into this state from

the State of California intoxicating liquors, and that in pursuance of such agreement and understanding, and in furtherance of such unlawful conspiracy, the two defendants, George Knollton and Florence Knollton, drove a certain automobile described in the indictment as a Stutz machine, which contained a quantity of liquor, from a point in California, the exact place thereof to the Grand Jury unknown to Lakeview in the State of Oregon. Again another act alleged to have been in furtherance of this conspiracy was that upon the same date the defendant, Jerry Knollton drove a certain automobile, described in the indictment as a Mercer machine, containing intoxicating liquors from the State of California into Oregon. And, third, that in pursuance of this alleged conspiracy the three defendants had in their possession some twenty-five miles from Lakeview a certain quantity of intoxicating liquor.

The second count of the indictment charges the three defendants with wilfully and unlawfully transporting or causing to be transported from the State of California into Oregon a quantity of intoxicating liquors described in the indictment as 435 quarts.

The defendants have each entered a plea of not guilty, and that plea controverts and is a denial of every material allegation in the indictment, and imposes upon the government the duty of proving such allegations to your satisfaction beyond a reasonable

doubt before you will be justified in finding the defendants, or either of them, guilty. The defendants in this case, as in all criminal cases, come before this jury clothed with the presumption of innocence, and the presumption continues with them throughout the trial until it is overcome by the testimony. In other words, it is not incumbent upon a defendant charged with a criminal offense to prove his or her innocence, but it is the duty of the Government, or the state as the case may be, to prove the guilt, and that beyond a reasonable doubt.

By a reasonable doubt, I do not mean a mere possible doubt; I do not mean a doubt such as a juror can conjure up in his own mind without any basis for it, but I mean a real substantial doubt, based whether upon the testimony or the want of testimony, and being such a doubt as would cause a reasonably prudent man to hesitate to act in his own most important affairs. And, if, after you have considered all of the evidence in this case, you entertain such a doubt, the defendants are entitled to the benefit of it and an acquittal.

Proof sufficient to justify a conviction in a criminal cases must be of a clear and convincing character. It is not sufficient to base a verdict upon mere conjecture, speculation or inference, not justified by the proof in the case, but it must be upon real substantial testimony that satisfies the minds of the jurors of the guilt of the defendants beyond a reasonable doubt.

As I have said, the first count in the indictment charges the defendants with the crime of conspiracy. A conspiracy is a mere unlawful agreement or understanding between two or more persons to commit an offense against the United States, and in this particular instance to commit the offense charged, which is alleged to have been the transportation of liquor from California into Oregon. Direct and positive proof of a conspiracy is not required. It may be shown by circumstances, by association, by co-operation, but there must be a unity of action and in pursuance of some plan or scheme entered into between the parties, and in this case, unless you believe there has been such an understanding or agreement between these parties, then the charge of conspiracy is not made out.

Conspiracy alone does not constitute a crime, but it is necessary in order to complete the offense that one or more of the conspirators do some act to effect the object thereof or in furtherance of the conspiracy as charged in this indictment, as I have already called to your attention, and if you believe from the evidence, beyond a reasonable doubt that these people entered into, either positively or impliedly, an understanding or agreement that they should transport intoxicating liquors from California into Oregon, and that in pursuance of that agreement and in furtherance thereof one of them drove an automobile containing liquor across the line, that would constitute an overt act within the

statute and complete the offense; and the same may be said as to either of the other two overt acts. It is not necessary for the Government to prove all three of them, but any one of them would satisfy that requirement of the statute.

The next count in the indictment is a direct charge that these parties transported intoxicating liquors from California into the State of Oregon, and that is a straight charge which has been denied by the plea of not guilty, and is for you to determine from the testimony.

Now, Gentlemen, the questions involved in this case under the rules as I have and shall give them to you are questions of fact, and all questions of fact are to be determined by this jury.

The Court over ruled a motion for a directed verdict, in your presence. You are not to infer from that, that in the opinion of the Court there is sufficient evidence to justify a conviction in this case. Under the system of administration of the law prevailing in this country it is the duty of the Court to determine all questions of law, and the exclusive duty of the jury to determine all questions of fact, and all that was implied or can be implied from the action of the Court in over-ruling the motion for a directed verdict is that in its judgment there was at least some evidence to go to the jury upon the questions involved in this controversy, and the Court has no more right to invade your

province and undertake to determine a disputed question of fact than you have a right to invade its province and undertake to determine a question of law. The duties of each are separate and distinct and one has no right to assume to perform the duties of the other. Therefore, no inference is to be drawn by this jury as against the defendants from the action of the Court in overruling the motion for a directed verdict.

You are the exclusive judges of all questions of fact in the case and of the credibility of all witnesses. Every witness is presumed to speak the truth. The presumption, however, may be overcome by the manner in which a witness testifies, by his appearance upon the witness stand, by contradictory testimony, or by evidence effecting his reputation or standing. You have heard these witnesses testify; you have noticed their appearance upon the witness stand, and now it is for you, and you alone, to determine what weight and credit is to be given to the testimony, judging from their appearance, their manner of testifying, their powers of observation, and all the circumstances surrounding their testimony, and from that determine what credit shall be given to it.

The Government relies to a considerable extent on what is known as circumstantial evidence. This character of evidence is competent and is often resorted to in the trial of criminal cases. When a conviction is sought upon it, it should not only show

that the circumstances testified to are true, but that they are not capable of reconciliation or being reconciled with the theory of the defendants' innocence. It is the duty of the jury in considering the testimony in the case, if you care to reconcile it with the theory of the defendants' innocence. The degree of certainty when circumstantial evidence if relied upon must be equal to direct testimony, and if there is any fact proved to your satisfaction by a preponderance of the evidence which is inconsistent with guilt, and that is a material fact in the chain of circumstances, then that will be sufficient to raise a reasonable doubt, and the defendant would be entitled to the benefit of it.

It is in evidence that George Knollton and Florence Knollton, two of the defendants, are husband and wife, and as far as the question of conspiracy is concerned they are to be considered as one, so that before you could find the defendants guilty on the first count of the indictment, it will be necessary for you to find there was co-operation, understanding and agreement between the two Knollton brothers.

The defendants have not testified in the case; they were not obliged to, not required to, and no inference is to be drawn against them because they did not testify; they had a perfect right to refrain from doing so, and to say to the Government, as the law says they may, "You charged me with this crime and it is your duty to prove it, and to prove

it beyond a reasonable doubt," and no unfavorable inference or deduction is to be inferred or assumed against the defendants because of their failure to testify.

There are two counts in this indictment. It will be necessary for this jury to pass upon each one, and to find a verdict of either guilty or not guilty, as you may think the testimony warrants.

You have no concern, of course, with the punishment that may follow the verdict in case you should find the defendants guilty. It is your duty under the testimony and under your oaths to say whether they are guilty or not, and if you believe they are, beyond a reasonable doubt, then it is your duty to say so, leaving the question of punishment, whatever it may be, to the Court. If, on the other hand, you are not able to say beyond a reasonable doubt that they are guilty, or if you have a reasonable doubt upon that subject, you should give them the benefit of it and acquit.

MR. BECKMAN: I also want to call the Court's attention to the early part of the instructions regarding what is alleged in Count 1 of the indictment. I believe the Court told the jury as to overt acts 2 and 3, the indictment reads that defendant George Knollton and Florence Knollton drove a car to Oregon; I think the indictment limits it to Lakeview, Oregon.

COURT: I make that correction; I notice it says they drove across the Oregon line to Lakeview.

MR. BECKMAN: As to Count 2 of the indictment, the Court said that they bringing the whiskey from California into Oregon. I think the indictment says from California to Portland in the State of Oregon.

COURT: It does say that.

MR. BECKMAN: They are required to prove it as alleged.

COURT: It says from California to Portland in the State of Oregon.

And the foregoing instructions are all the instructions given by the Court to the jury at said trial.

Exception IV.

Thereafter, within the time allowed by the Court, the defendants moved the Court as follows:,

"Comes now George W. Knowlton, Florence May Knowlton and Jerry Knowlton, the above named defendants, each for themselves, by their attorneys, Manning & Beckman, within the time allowed by Court, and move the Court for a new trial on behalf of each of said defendants, upon the following grounds and for the following reasons:

I.

That count 2 of the indictment does not state facts sufficient to constitute a crime.

II.

That the Court erred in refusing to direct a verdict of not guilty, as to each of the said defendants at the close of the Government's evidence.

III.

That the Court erred in refusing to direct a verdict of not guilty as to each of the said defendants, at the close of all the evidence.

IV.

That the evidence was insufficient to justify a verdict of guilty against George E. Knowlton on count 2 of the indictment.

V.

That the evidence was insufficient to justify a verdict of guilty against Florence May Knowlton on count 2 of the indictment.

VI.

That the evidence was insufficient to justify a verdict of guilty against Jerry Knowlton on count 2 of the indictment.

VII.

That the verdict of the jury against George E. Knowlton was against the law as laid down by the Court.

VIII.

That the verdict of the jury against Florence May Knowlton was against the law as laid down by the Court.

IX.

That the verdict of the jury against Jerry Knowlton was against the law as laid down by the Court.

Thereafter the Court heard arguments of counsel upon the said motion and sustained the same as to defendant Florence May Knowlton, and overruled the same as to the defendants George E. Knowlton and Jerry Knowlton, to which action of the Court, the two last named defendants were duly allowed an exception.

Exception V.

Thereafter, within the time allowed by the Court the defendants moved the Court for an arrest of judgment as follows:

AND now after verdict against the defendants

George E. Knowlton and Florence May Knowlton and Jerry Knowlton, and before sentence, come the said defendants, and each of them for themselves, by their attorneys, Manning & Beckman, and move the Court here to arrest judgment herein and not pronounce judgment against the said defendants, or either of them, for the following reasons:

I.

That count 2 of the indictment does not state facts sufficient to constitute a crime.

II.

That the Court erred in refusing to direct a verdict of not guilty, as to each of the said defendants, at the close of the Government's evidence.

III.

That the Court erred in refusing to direct a verdict of not guilty, as to each of the said defendants, at the close of all of the evidence.

IV.

That the evidence was insufficient to justify a verdict of guilty against George E. Knowlton on count 2 of the indictment.

V.

That evidence was insufficient to justify a ver-

dict of guilty against Florence May Knowlton on count 2 of the indictment.

VI.

That the evidence was insufficient to justify a verdict of guilty against Jerry Knowlton on count 2 of the indictment.

VII.

That the verdict of the jury against George E. Knowlton was against the law as laid down by the Court.

VIII.

That the verdict of the jury against Florence May Knowlton was against the law as laid down by the Court.

IX.

That the verdict of the jury against Jerry Knowlton was against the law as laid down by the Court.

Thereafter the Court heard the arguments of counsel upon said motion, and allowed the said motion as to defendant Florence May Knowlton, and over-ruled the said motion as to defendants George E. Knowlton and Jerry Knowlton, to which action of the Court the last two named defendants were allowed an exception.

Exception VI.

Thereafter, the Court entered a judgment of conviction and sentenced the defendants, George E. Knowlton and Jerry Knowlton, to confinement in the County Jail of Multnomah County, Oregon for a period of six months.

It is certified that the foregoing is all of the testimony, evidence, records and exceptions in said case material to the exceptions herein noted.

Thereafter, within the time allowed by the Court, the defendants, George E. Knowlton and Jerry Knowlton, presented this, their Bill of Exceptions, which is hereby allowed.

Dated this 19th day of April, 1920.

R. S. BEAN,
District Judge.

Due service of the within Bill of Exceptions is hereby accepted this 19th day of April, 1920.

JOHN C. VEATCH,
Assistant United States Attorney.

[Endorsed]: United States District Court, District of Oregon. Filed April 19, 1920. G. H. Marsh, Clerk.

In the District Court of the United States for the District of Oregon.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

GEORGE E. KNOWLTON and
JERRY KNOWLTON,
Defendants.

Sitpulation as to Record.

It is hereby stipulated by and between the United States of America, by John C. Veatch, Assistant United States Attorney for the District of Oregon, and George E. Knowlton and Jerry Knowlton, the defendants, by Manning & Beckman, their attorneys, that the following documents, papers and records in the case of the United States of America vs. George E. Knowlton and Jerry Knowlton shall be included in the transcript of record in the said cause, and that the same are all the necessary documents, papers and records to be considered in reviewing the said case on writ of error, to-wit:

Indictment.
Bill of Exceptions.
Assignments of Error.
Petition for Writ of Error.
Order Allowing Writ of Error.
Citation.
Writ of Error.
Arraignment and Plea.

Impaneling of Jury.
Verdict.
Judgment.
Bond.

It is further hereby stipulated between the respective parties hereto that the foregoing printed record now tendered to the Clerk of the above entitled Court for his certificate, and filed in the above cause, is a true transcript of the record in said cause, and that the said Clerk may certify said transcript to the United States Circuit Court of Appeals for the Ninth Circuit, without comparing the same with the original record which is on file herein.

Dated this 17th day of May, 1920.

JOHN C. VEATCH,
Attorneys for Plaintiff.
MANNING & BECKMAN,
Attorneys for Defendants.

[Endorsed]: Filed May 17, 1920. G. H. Marsh, Clerk.

In the District Court of the United States for the District of Oregon.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GEORGE E. KNOWLTON and
JERRY KNOWLTON,

Defendants.

Order Under Rule 16 Enlarging Time to June 15, 1920, to File Record Thereof and to Docket Case.

Now at this time, upon motion of defendants, by their attorneys, Manning & Beckman, the time within which the defendants are allowed to file their transcript of record and docket said cause in the United States Circuit Court of Appeals for the Ninth Circuit is hereby extended to and including the 15th day of June, 1920.

Dated at Portland, Oregon, this 17th day of May, 1920.

R. S. BEAN, Judge.

In the District Court of the United States for the District of Oregon.

UNITE DSTATES OF AMERICA,
Plaintiff,

vs.

GEORGE E. KNOWLTON and
JERRY KNOWLTON,
Defendants.

United States of America,
District of Oregon,—ss.

I, G. H. Marsh, Clerk of the District Court of the United States for the District of Oregon, do hereby certify that the foregoing printed transcript of record on writ of error in the case of George E. Knowlton and Jerry Knowlton, plaintiffs in error, vs. United States of America, defendant in error, is a true transcript of the record in said cause in said Court. This certificate is made without comparing the said transcript of record with the original record in said cause, pursuant to the stipulation of the parties therein that this record may be certified to by me to be a true copy, without comparison.

IN TESTIMONY WHEREOF, I have hereunto set my hand and the seal of said Court in said District this —— day of May, 1920.

.....Clerk.